IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES *ex rel.*	)	
VIRAN ROGER HOLDEN, individually,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No.**
	)	
	)	
GREGORY NANNEY, M.D., STEVEN	)	
BRAUN, M.D., MERCY HOSPITAL	)	
SPRINGFIELD f/k/a ST. JOHN'S REGIONAL	)	
HEALTH CENTER and MERCY CLINIC	)	
SPRINGFIELD COMMUNITIES f/k/a ST.	)	***IN CAMERA***
JOHN'S CLINIC, INC.,	)	**AND UNDER SEAL**
	)	
Defendants.	)	

COMPLAINT

Qui tam Plaintiff-Relator Viran Roger Holden ("Plaintiff-Relator"), by and through his undersigned attorneys, on behalf of the United States of America and himself individually, alleges as follows in support of his Complaint against Defendants Gregory Nanney, M.D., Steven Braun, M.D., Mercy Hospital Springfield and Mercy Clinic Springfield Communities, based upon personal knowledge and relevant documents:

NATURE OF ACTION

1. This is a *qui tam* action on behalf of the United States of America against Defendants Gregory Nanney, M.D., Steven Braun, M.D., Mercy Hospital Springfield and Mercy Clinic Springfield Communities (collectively "Defendants") arising from Defendants' knowing violation of Federal Civil False Claims Act, 31 U.S.C. §3729 *et seq.*, as amended ("the FCA" or "the Act"). Specifically, defendants have systematically and knowingly submitted false claims to Medicare, and have willfully and knowingly conspired to submit false claims.

JURISDICTION AND VENUE

2. Jurisdiction exists pursuant to 31 U.S.C. ¶¶ 3730(b)(1) and 3732, because this action seeks remedies on behalf of the United States for violations of 31 U.S.C. ¶ 3729 *et seq*. by Defendants and Defendants can be found and transact business in this District. Venue exists in this District pursuant to 31 U.S.C. ¶¶ 3730(b)(1) and 3732, because Defendants are qualified to do business in the State of Missouri, conduct substantial business in the State of Missouri and transact substantial business in this District.

3. Venue is proper in the Western District of Missouri pursuant to 31 U.S.C. § 3732(a) because Defendants can be found in and transact or have transacted business in this district. In addition, statutory violations, as alleged herein, occurred in this district.

4. To the extent that there has been a public disclosure unknown to Plaintiff-Relator, Plaintiff-Relator is an original source as defined by 31 U.S.C. §3730(e)(4). He has direct and independent knowledge of the information upon which the allegations set forth herein are based and has voluntarily provided the information upon which this Complaint is based to the United States prior to filing the instant *qui tam* action. Specifically, Plaintiff-Relator met with investigators for the Department of Health and Human Services, Office of the Inspector General on March 27, 2014. Plaintiff-Relator provided the United States with documentation via a written disclosure on April 29, 2014.

PARTIES

5. The Government Plaintiff in this action is the United States of America. Pursuant to the provisions of 31 U.S.C. §3730(b)(1), Plaintiff-Relator Viran Roger Holden is suing in the name of and on behalf of the United States of America.

6. Defendant Gregory Nanney, M.D. ("Defendant Nanney"), at all times mentioned herein, was a licensed physician specializing in hematology oncology.

7. Defendant Steven Braun, M.D. ("Defendant Braun"), at all times mentioned herein, was a licensed physician specializing in radiation oncology.

8. Defendant Mercy Clinic Springfield Communities is a domestic non-profit corporation that conducts business through multiple offices and clinics on the Mercy Springfield Campus, including the Cancer & Hematology and Radiation Oncology clinics, both located within the Chub O'Reilly Cancer Center. At that facility, Defendant Mercy Clinic Springfield Communities also maintains laboratory and radiology facilities. Defendant Mercy Clinic Springfield Communities was formerly known as St. John's Clinic, Inc., with its change of name recognized by the State of Missouri on November 15, 2011. At all times relevant to the allegations herein, Defendant Mercy Clinic Springfield Communities was the employer of Defendants Nanney and Braun. Mercy Clinic Springfield Communities' address (as reported to the Missouri Secretary of State) is 1965 S. Cherokee, Springfield, Missouri, while the Chub O'Reilly Cancer Center is located at 2250 S. Fremont, Springfield, Missouri.

9. Defendant Mercy Hospital Springfield, at all times mentioned herein, is a domestic non-profit corporation that operates a hospital and medical facilities, including radiological facilities, laboratory facilities and a radiation and chemotherapy infusion center. Defendant Mercy Hospital Springfield was formerly known as St. John's Regional Health Center, with its name change recognized by the State of Missouri on November 15, 2011, and is located at 1235 E. Cherokee St., Springfield, MO 65804.

10. Viran Roger Holden, M.D., PhD ("Plaintiff-Relator") resides in Springfield, Missouri. Plaintiff-Relator is a medical doctor licensed in the State of Missouri and board

certified in medical oncology and hematology. Plaintiff-Relator has a PhD in microbiology and immunology. Plaintiff-Relator has been employed by Mercy Clinic Springfield Communities as a medical oncologist in Springfield, Missouri since 2005. During that time period, Plaintiff-Relator has seen patients who were also patients of Defendants Nanney and Braun, many of whom were Medicare patients. At all times relevant herein until on or about May 2012, Plaintiff-Relator was also the Chair of the Mercy Clinic Springfield Communities Oncology Department and in that capacity, received information relating to patients of the Oncology Department including concerns and complaints of physicians and other healthcare providers.

FILING UNDER SEAL

11. In accordance with 31 U.S.C. § 3730(b)(2), this Complaint is filed *in camera* and will remain under seal and will not be served on the Defendants until the Court so orders. A copy of the Complaint and a written disclosure of substantially all material evidence and information in the possession of Plaintiff-Relator will be served on the United States pursuant to 31 U.S.C. § 3730(b)(2) and FED.R.CIV.P. 4(i). The written disclosure is incorporated herein by reference. Plaintiff-Relator's previous oral and written disclosures to the United States of March 27, 2014 and April 29, 2014 are incorporated herein by reference.

MEDICARE REIMBURSEMENT REQUIREMENTS

12. The Medicare program will reimburse physicians only for medically necessary procedures. For that reason, Medicare claim forms require the physician submitting the claim to certify that the procedures for which reimbursements are sought are medically necessary.

13. The Medicare program also requires participating physicians to maintain true and accurate records supporting the legitimacy of claims submitted for reimbursement.

DEFENDANTS' FRAUDULENT SCHEME OF PERFORMING AND BILLING FOR UNNCESSARY PROCEDURES AND TREATMENTS

14. Defendants Nanney and Braun routinely, and as a pattern and practice, knowingly presented and caused to be presented false and fraudulent Medicare claims for payment in violation of 31 U.S.C. § 3729(a)(1) by systematically performing and billing for medically unnecessary services and/or inappropriate treatment.

15. For example, Defendant Nanney, prescribed a patient six cycles of AC (Adriamycyin/Cytoxan) followed by Taxotere, even though the standard of care was only four cycles and there was no medical reason to exceed four cycles. Therefore, the additional two cycles of AC followed by Taxotere were medically unnecessary.

16. Defendant Nanney also frequently ordered labs on his patients weekly, even though the standard of care normally requires labs only every three to four weeks and there was no medical reason to order weekly labs. Therefore, the additional labs were medically unnecessary. In addition, the labs that Defendant Nanney ordered were often unusual. For example, ordering tumor markers for the wrong cancers where the resulting information had no medical benefit.

17. Defendant Nanney also frequently ordered radiologic scans for his patients every three months, even though the standard of care normally requires such scans only once annually and there was no medical reason for such scans. Therefore, the additional scans were medically unnecessary.

18. Defendant Braun routinely left his clinic prior to 4:00 p.m., while nurses and technicians continued to treat his patients until 6:00 p.m. or 7:00 p.m., such that he was not "immediately available" to his patients. Therefore, whether such services were billed under

Defendant Braun or as "incident to" services, the lack of Defendant Braun's physical presence in the clinic renders such treatment inappropriate.

19. Defendant Braun often used EMR cloning with respect to medical entries on patients such that a misrepresentation occurred regarding the medical necessity required for the services rendered.

20. Defendant Braun also routinely engaged in ordering three to four radiation therapy simulations for his patients, when the standard of care only requires two radiation therapy simulations, with no medical reason for the additional radiation therapy simulations. Therefore, the additional radiation therapy simulations were medically unnecessary.

21. In one instance, Defendant Nanney prescribed Rituxan to a patient while Defendant Braun was simultaneously providing radiation therapy, even though there was no medical reason for concurrent radiation treatment. In fact, such concurrent treatment endangered the patient, such that either the Rituxan or the radiation therapy was medically unnecessary and inappropriate.

22. In another instance, where the patient suffered from borderline intellectual functioning, Defendant Nanney prescribed additional rounds of chemotherapy over and above the standard of care while Defendant Braun simultaneously treated the patient with radiation therapy, with no medical reason for either the additional rounds of chemotherapy or concurrent radiation treatment. Therefore, the additional rounds of chemotherapy and the radiation therapy were medically unnecessary.

23. On information and belief, Defendants Nanney and Braun treated patients in a manner that would maximize reimbursement from Medicare, disregarding the well-established national cancer treatment guidelines.

24. Defendant Mercy Clinic Springfield Communities and/or Defendant Mercy Hospital Springfield owns the radiologic facilities, laboratory facilities and the chemotherapy and radiation infusion center utilized by Defendants Nanney and Braun. Defendant Mercy Clinic Springfield Communities and/or Defendant Mercy Hospital Springfield would receive fees for services connected with the care of the patients of Defendants Nanney and Braun.

25. In addition, the medically unnecessary treatments by Defendants Nanney and Braun often resulted in adverse side effects for the patients, including hospital admissions for which Mercy Hospital Springfield and Mercy Clinic Springfield Communities would receive additional payments by Medicare.

26. Defendant Mercy Clinic Springfield Communities was first made aware of many of the aforementioned acts of Defendant Nanney in August 2011, when Plaintiff-Relator went to his office manager, Amy Fore.

27. In or about January 2012, following the incident set forth in Paragraph 20 above, Plaintiff-Relator attended a meeting regarding Defendant Nanney, also present were Amy Fore, Allen Allphin, M.D. (Chief of Staff of Mercy Hospital), Kevin Goodwin (Vice-President of Operations of Mercy Clinic Springfield Community), Stanley Hayes, M.D. (Director of Medical Subspecialties of Mercy Clinic Springfield Communities), Majula Raju, M.D., Lavany Tiriveedhi, M.D., Gary Hoos, M.D., and Alexander Hover, M.D. At the meeting, Plaintiff-Relator brought to the attention of all present five cases wherein he believed Dr. Nanney's treatment was inappropriate and/or needlessly endangered the patient. Following the meeting, Mercy Clinic Springfield Communities made a determination to send these cases for external review.

28. Following the external review process, Dr. Nanney was allowed to continue practicing within the Cancer & Hematology Clinic, but was subjected to a Performance Improvement Plan, wherein he was required to become board certified in 2012 and also required that his charts be reviewed and approved by senior physicians.

29. Despite these precautions, Defendant Nanney continued his pattern of over-treating patients.

30. In May 2012, Plaintiff-Relator, approached and met with the general counsel for Mercy Hospital Springfield and/or Mercy Clinic Springfield Communities, Michael Merrigan, with his concerns regarding Defendants Nanney and Braun. At this meeting, Plaintiff-Relator voiced his concerns regarding what he believed to be Medicare and Medicaid fraud. Mr. Merrigan inquired as to whether Plaintiff-Relator believed that Dr. Nanney was overtreating patients to receive additional compensation and Plaintiff-Relator responded affirmatively.

31. In or about May 2012, Defendant Nanney left his employment with Mercy Clinic Springfield Communities.

32. In or about June 2012, Plaintiff-Relator was removed from his position as Chair of Medical Oncology.

33. On information and belief, Defendants Mercy Clinic Springfield Communities and Mercy Hospital Springfield had knowledge of Defendants Nanney and Braun's improper treatment and billing practices since as early as August 2011, but at least since August 2012, and took no steps to disclose said improper billing practices to Medicare or to cure past improper payments received by Defendants Mercy Clinic Springfield Communities and Mercy Hospital Springfield from Medicare.

34. Further, on information and belief, Defendants Mercy Clinic Springfield Communities and Mercy Hospital Springfield have not notified any affected patients regarding the improper care provided by Defendants Nanney and Braun.

COUNT ONE

FALSE CLAIM UNDER 31 U.S.C. § 3729

35. Plaintiff-Relator adopts and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

36. Defendants knowingly presented, or caused to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval in that Defendants knowingly performed medically unnecessary procedures and presented or caused to be presented false claims to The United States through Medicare for payment of same.

37. Defendants' fraudulent actions, as described above, are part of a systematic pattern and practice of knowingly submitting or causing to be submitted false claims to the United States through fraudulent performance of medically unnecessary procedures and fraudulent billing of the United States through Medicare.

38. By and through the actions described herein, Defendants knowingly made, used, or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by the United States through Medicare.

39. By and through the actions described herein, Defendants knowingly made, used, or caused to be made or used, false certifications regarding past, present, or future compliance with a prerequisite for payment or reimbursement by the United States through Medicare.

40. Defendants' fraudulent actions described herein have resulted in damage to the United States equal to the amount paid or reimbursed to Defendants by the United States through Medicare for such false or fraudulent claims.

41. WHEREFORE, Plaintiff-Relator, on behalf of himself and the United States government, requests the following relief:

42. Judgment against each defendant in the amount of three (3) times the amount of damages the United States of America has sustained, plus a civil penalty of $11,000 for each violation of 31 U.S.C. § 3729 and the appropriate fines and penalties for violating the protective federal laws applicable to the fraudulent and false conduct and the costs of this action with interest;

43. That the Plaintiff-Relator be awarded all costs incurred, including reasonable attorneys' fees;

44. In the event the United States proceeds with this action, Plaintiff-Relator be awarded any appropriate amount for disclosing evidence or information that the United States did not possess when this action was disclosed to the government. The amount awarded to the Plaintiff-Relator should include the results of Government actions or settlement of claims resulting from the expansion of claims through the Government's further investigation directly generated from or attributable to Plaintiff-Relator's information; and

45. Such other relief as this Court deems just and appropriate.

COUNT TWO

CONSPIRACY UNDER 31 U.S.C. § 3729(a)(3)

46. Plaintiff-Relator adopts and incorporate by reference paragraphs 1 through 45 as though fully set forth herein.

47. Defendants knowingly presented, or caused to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval: to wit, Defendants knowingly performed medically unnecessary procedures and presented or caused to be presented false claims to the United States through Medicare for payment of same.

48. The Government paid Defendants for such false claims.

49. Defendants in concert with their principals, agents, and employees did agree to submit such false claims to the United States.

50. Defendants and/or their principals, agents, and employees did act, by and through the conduct described herein, in furtherance of the agreement to submit false claims to the United States.

51. Defendants and their principals, agents, and employees acted with the intent to defraud the United States by submitting false claims for payment or reimbursement through Medicare.

52. Defendants' fraudulent actions described herein have resulted in damage to the United States equal to the amount paid or reimbursed to Defendants by the United States through Medicare for such false or fraudulent claims.

WHEREFORE, Plaintiff-Relator, on behalf of himself and the United States government, requests the following relief:

53. Judgment against each Defendant in the amount of three (3) times the amount of damages the United States of America has sustained, plus a civil penalty of $11,000 for each violation of 31 U.S.C. § 3729 and the appropriate fines and penalties for violating the protective federal laws applicable to the fraudulent and false conduct and the costs of this action with interest;

54. That the Plaintiff-Relator be awarded all costs incurred, including reasonable attorneys' fees;

55. In the event the United States proceeds with this action, Plaintiff-Relator be awarded any appropriate amount for disclosing evidence or information that the United States did not possess when this action was disclosed to the government. The amount awarded to the Plaintiff-Relator should include the results of Government actions or settlement of claims resulting from the expansion of claims through the Government's further investigation directly generated from or attributable to Plaintiff-Relator's information; and

56. Such other relief as this Court deems just and appropriate.

JURY DEMAND

57. Plaintiff-Relator demands a trial by jury on all claims.

Respectfully Submitted,

PLACZEK WINGET & PLACZEK

By: /s/ Jenifer M. Placzek

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